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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re JOSHUA C.,  
a Person Coming Under  
the Juvenile Court Law.

H027298  
(Santa Clara County  
Super. Ct. No. JD14626)

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SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

DARLENE C.,

Defendant and Appellant.

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Appellant challenges an order made at the six-month review hearing concerning her 10-year old son Joshua C. She contends, "The juvenile court abused its discretion by failing to liberalize mother's visits to include unmonitored and/or overnight visits with Joshua." We affirm.

**Facts and Procedural Background**

"This is a most extraordinary case that has presented challenges and obstacles that are unique in the memory of anyone in [The Department of Family and Children's Services]." In July 2003, the juvenile court sustained a dependency petition under

Welfare and Institutions Code section 300 concerning Joshua C. A report prepared for jurisdiction and disposition said that Joshua's 17-year old paraplegic sister Courtney had left the family's room in an extended stay hotel in Morgan Hill and, traveling for two days on public transportation and in her wheelchair, had arrived at the Children's Shelter to seek help. Joshua and Courtney had been living with their mother in the hotel for about a year and a half. Courtney said she had been confined to the bathroom, sleeping on the floor or the counter. She had become a paraplegic when she was six, as a result of a playground accident, and in the past nine years had received no medical care and had not attended school.

Joshua had never attended school and had not had routine medical care. Ms. C. said she home-schooled Joshua. In the hotel room, Joshua and Ms. C. used a portable toilet in the bedroom because Courtney was in the bathroom all the time. Hotel personnel said Ms. C. had not allowed them to clean the room for over a year and they resisted doing so because the odor in the room was intolerable and Ms. C. would "yell" at them. A social worker visiting the hotel room found no evidence of toiletries or clothing for the children and only a minimal amount of food.

Despite her living situation, Courtney was "surprisingly bright, artistic, mature, [and] self-motivated." Joshua, too, was very well mannered, bright, and motivated. He did appear young for his age, innocent, naïve, quiet, timid and frightened. Following Joshua's detention, the juvenile court ordered appellant to have supervised visitation with Joshua once per week for two hours. Following the disposition hearing, the juvenile court ordered reunification services and a psychological evaluation for appellant. The court increased the supervised visitation between Joshua and appellant to a minimum of two hours per week with the social worker having the discretion to increase the frequency

and duration of visits and to permit unsupervised visits. The court ordered no contact or communication between Courtney and appellant until they engaged in therapy.<sup>1</sup>

Dr. Faren R. Akins prepared a psychological report for the juvenile court concerning appellant. Dr. Akins described appellant as "thoughtful and well-spoken," "docile, polite and friendly," with a "pleasant demeanor." Dr. Akins found Ms. C. to have positive intellectual skills and healthy psychological functioning. The report said Ms. C. "lacks much insight, especially with regard to her children's needs, and has a huge gap in her capacity to parent her children when it comes to setting and consistently enforcing limits and establishing and fostering proper personal boundaries. . . . Ms. C[.'s] parenting deficits will likely not be remedied without significant intervention. Her parenting limitations do pose a threat of risk to her child." Dr. Akins said this case "was one of the few in his career that kept him awake at night."

Joshua was placed in a foster home where he thrived, doing well in school both socially and academically. He missed his mother. Over the Thanksgiving break, Joshua had a four-hour visit with Ms. C. On several Saturdays in December, the social worker allowed two hours of unsupervised visitation. There was a four-day visit with overnights during the Christmas holidays and a similar visit for the New Year's holiday. From all accounts, these visits proceeded in an enjoyable and appropriate manner. At the beginning of January 2004, a revised visitation agreement was made permitting unsupervised visits between Joshua and Ms. C. for an indefinite period. However, the social worker wrote, "A recent immediate response (IR) investigation by DFCS is causing the department to review that visitation plan."

The report prepared for the six-month review hearing said Ms. C. had moved into an apartment and had completed two sets of parenting classes. Joshua attended the second set with Ms. C. Ms. C. received excellent marks for her participation. She had

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<sup>1</sup> Courtney had "no desire to see her mother."

completed a course of study in real estate. Although the social worker had allowed the unsupervised and overnight visitation between appellant and Joshua described above, she made no change in the recommendation to the court. Ms. C. argued that the social worker, having exercised discretion to allow unsupervised visitation, now needed to file a modification petition under Welfare and Institutions Code section 388 in order to recommend supervised visitation. The trial court rejected this argument, and appellant concedes that issue here. The trial court left the visitation order as originally set. Appellant contends the trial court abused its discretion by not including unmonitored or overnight visitation in its order.

### **Visitation Order**

Appellant contends, "The juvenile court abused its discretion by failing to liberalize mother's visits to include unmonitored and/or overnight visits with Joshua." Where a child is removed from a parent's custody in a dependency proceeding, the general rule, stated in Welfare and Institutions Code section 362.1, is that the court shall order "visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child." (§ 362.1, subd. (a)(1)(A).) The juvenile court has the power and responsibility to regulate visitation between dependent children and their parents. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374; *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 756.) To satisfy this responsibility, a court must "define the rights of the parties to visitation." (*In re Jennifer G., supra*, 221 Cal.App.3d at p. 757.) The court may delegate "ministerial tasks of overseeing the right [to visitation] as defined by the court" to a child protective agency. (*Ibid.*) Within guidelines established by the court, the child protective services agency may exercise flexibility in managing the visitation. (*In re Moriah T., supra*, 23 Cal.App.4th at p. 1375.)

Appellant argues, "it was an abuse of discretion by first the Agency, which refused to liberalize [Ms. C.]'s visits with Joshua, then by the juvenile court, which failed to

exercise its power against the Agency's recommendation, which was not supported by substantial evidence." Appellant asserts "there was no substantial evidence that the unsupervised overnight visits that Joshua and [Ms. C.] were permitted in December 2003 and January 2004 had in any way been harmful to Joshua."

The trial court did not abuse its discretion and substantial evidence supports the trial court's continuation of the visitation order which permitted visitation between Joshua and appellant a minimum of two hours per week with the social worker having the discretion to increase the frequency and duration of visits and to permit unsupervised visits. In using the discretion given to her by the trial court the social worker was, as the trial court put it, "testing the waters" by permitting unsupervised and overnight visitation over the holidays. That these visits went well does not mean that they must automatically become the standard practice. What appellant seeks here is essentially appellate court review of the social worker's exercise of discretion in arranging some visitation above the minimum ordered by the court and then returning to the level previously set by the court. In declining to be conclusively bound by that exercise of discretion, the trial court observed, "I'm not interested in micromanaging the visitation issues because I don't have the time to. And if every use of discretion resulted in a court hearing we would soon be very backed up."

This was an "extraordinary case" that kept the examining psychologist awake at night thinking about it. The psychologist noted Ms. C. had "obviously serious problems" with parenting that were not explained by the results of the psychological tests administered. Both the social worker and the trial court were well advised to proceed prudently. The social worker's cautious demonstration of flexibility should not be transformed into a court order simply because an experiment in liberalizing visitation over the holidays was successful. To hold otherwise would, as the trial court noted, act as a "disincentive" to the exercise of the discretion conferred on the social worker by the court, and such rigidity would be inconsistent with the necessity of responding to

changing circumstances. Although it may have been within the court's discretion to increase the minimum level of visitation based on the evidence before it, the court was not compelled by this evidence to do so. Given the challenging and problematic nature of this unusual case, the trial court did not abuse its discretion in its visitation order and it was supported by substantial evidence.

**Disposition**

The order appealed from is affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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MIHARA, J.